

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 120/Lab./AIL/J/2014, dated 18th August 2014)

## NOTIFICATION

Whereas, the award in I.D.(L) No. 34/2012, dated 27-6-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bharathi Mills, Puducherry and Thiru K. Ezhumalai represented by Panjalai Thozhirsanga Congress, Puducherry over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

**S. THAMMU GANAPATHY,**

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PONDICHERRY

*Present :* Tmt. S. MARY ANSELAM, M.A., M.L.,  
Presiding Officer (FAC),  
Labour Court.

*Friday, the 27th day of June 2014***I.D. (L) No. 34/2012**

K. Ezhumalai, represented by Secretary,  
Panjalai Thozhirsanga Congress,  
Puducherry. . . Petitioner

*Versus*

The Managing Director,  
M/s. Sri Bharathi Mills,  
Puducherry. . . Respondent

This industrial dispute coming on 20-6-2014 for final hearing before me in the presence of Thiru V. Govindaradjou, Counsel for the petitioner, Thiru K. Ravikumar, Counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

## AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 134/AIL/Lab./J/2012, dated 23-8-2012 for adjudicating the following:

(1) Whether the dispute raised by Panjalai Thozhirsanga Congress against the management of M/s. Sri Bharathi Mills, Puducherry, over non-employment of Thiru K. Ezhumalai is justified?

(2) If justified, what relief the petitioner is entitled to ?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2.The facts giving rise to this industrial dispute as stood exposited from the claim petition runs thus:

The petitioner is a workman employed in the respondent/management mill in the finished warehouse section. Due to affliction with chicken pox, he was not able to report for duty in the first week of July 2004. But, however, he has sent the leave letter for 10 days through his co-worker by name Thiru Parangusam. When he has reported for duty after 10 days, the respondent refused to allow him to work stating that he has been suspended for his absence and has further stated that he would receive show cause notice in this regard in due course. But, however, he has not received either the suspension order or the show cause notice till this day. While so, on 26-3-2005 he received the order, dated 6-12-2004 from the management intimating that he was demoted as a Badli worker. The said order, dated 6-12-2004 is not valid since the respondent/management has not followed the principles of natural justice. On receiving the order, dated 6-12-2004 on 26-3-2005, the petitioner has reported for duty and requested the respondent/management to permit him to do his work. But, the respondent/management has refused to provide employment to the petitioner. On 8-1-2009, the respondent/management has made a publication in "Daily Thanthi", a Tamil daily newspaper stating that from 27-3-2005 the petitioner has been continuously absent on his own accord without any intimation and thus the petitioner has violated the Employment Standing Order and therefore an enquiry would be conducted on 23-1-2009 at 10.30 a.m. in the Personal Department of the respondent's mill premises.

After seeing the publication in the newspaper, dated 8-1-2009, the petitioner has appeared before the Enquiry Officer on 23-1-2009 at 10.30 a.m. and received the copy of the notice, dated 4-3-2008. The enquiry was conducted on 4-2-2009 and the petitioner was not served the notice

of the date of hearing of the subsequent enquiry. He had received the information from his co-workers that the enquiry will be conducted by a new officer by name Thiru G. Krishnan and the enquiry were posted on 19-9-2009. So the petitioner has participated in the enquiry proceedings and had denied the charges that levelled against him. The Enquiry Officer has also directed the respondent/management to furnish the copies of the documents that were relied upon by the respondent/management. But the management has not furnished the same till this day. The enquiry was conducted on various dates. On 6-5-2010, the respondent/management has expressed that they are ready to give employment provided is willing to report for duty. The petitioner has immediately expressed his consent and readiness to report for duty and in fact he has also joined the duty and worked subsequently in the mills.

Subsequently, the petitioner has received a second show cause notice, dated 28-4-2010 stating that the enquiry was completed and he was found guilty by the Enquiry Officer and therefore the respondent/management sought for the petitioner's explanation on their proposal of imposing the penalty of discharge from the service of the petitioner as a punishment for the alleged absenteeism. The petitioner in his reply dated, 5-5-2009 has stated that without providing him any opportunity the Enquiry Officer has hurriedly without following the principles of natural justice. Thereafter, in his order, dated 2-8-2010 the respondent/management would discharging the petitioner from service. Aggrieved by the order of discharge issued by the respondent/management, the petitioner filed this claim petition.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:

The respondent states that the petitioner was unauthorisedly absent from duty from 3-7-2004 to 14-7-2004. As per the clause No. 15(a) of the Standing Orders of the respondent mills, any worker who is unauthorisedly absent from duty for more than 8 days is construed to have voluntarily left service and the respondent is empowered to remove such worker's name from the muster rolls. The respondent had on 15-7-2004 issued a show cause notice to the petitioner. The petitioner had received the notice, but, no reply was sent to the respondent. Appointedly, Personal Officer Mr. Muniyandi as Enquiry Officer and had fixed the date of enquiry on 28-7-2004. The enquiry notice to the petitioner on 22-7-2004 through registered post returned with the endorsement "unclaimed". In order to give the petitioner another opportunity, the respondent had fixed

the date of enquiry on 11-8-2004 and the enquiry notice was issued on 2-8-2004. The petitioner had received the notice in person on 3-8-2004. But he had not appeared before the Enquiry Officer on 11-8-2004. In order to give one more opportunity to the petitioner, the respondent had fixed the date of enquiry on 21-8-2004 and issued the final enquiry notice to the petitioner through registered post. On 14-8-2004 this notice was returned to the endorsement "unclaimed". So, the Enquiry Officer was conducted on 21-8-2004 and the Enquiry Officer had examined the representative of respondent and after due enquiry, the Enquiry Officer had posted the matter for orders.

The petitioner was again unauthorisedly absent from duty from 6-9-2004 to 14-9-2004. On 15-9-2004, the petitioner had come to work but, he was not permitted to work, the petitioner shouted at the Time Keeper and he was placed under suspension *vide* order, dated 15-9-2004. On 15-9-2004 the respondent issued a show cause notice-*cum*-suspension order to the petitioner through registered post. The petitioner had received it and issued a vague reply on 27-9-2004. On 28-9-2004 the respondent passed an order till 28-9-2004 as the charges, dated 15-9-2004 stood proved. The petitioner was directed to join duty on 29-9-2004. During this time, the Enquiry Officer Mr. Muniyandi, had presented his findings, holding that the charges in the show cause notice, dated 15-7-2004 stood proved. The petitioner was again unauthorisedly absent from duty 17-10-2004 to 12-11-2004. On 12-11-2004, a show cause notice was issued to the petitioner, the petitioner had received the notice but, no reply was sent. The respondent states that on 15-11-2004, another show cause notice, dated 15-7-2004 was sent. With a direction to submit his explanation within 48 hours that notice was returned with an endorsement on 15-11-2004. So, on 6-12-2004, the respondent had issued an order demoting the petitioner to Badli and had directed the petitioner to report for duty from 7-12-2004. The order was also refused by the petitioner and the same was returned with endorsement "unclaimed".

The petitioner came to the mill on 26-3-2005 and had personally received the order, dated 6-12-2004 and on 26-3-2005 issued a letter to the respondent requesting him to permit him to work. The respondent had permitted him to join duty as per the order, dated 6-12-2004, the respondent had not come back to work. So, the petitioner was not interested or intended to rejoin duty with the respondent. So, on 4-3-2008, the respondent issued a show cause notice, through registered post. The notice, dated 4-3-2008 and the same was returned with endorsement "No such addressee". So, publication was

made in a local daily on 8-1-2005. On seeing the paper publication, dated 8-1-2009. The petitioner had not appeared before the respondent, but on 23-1-2009 issued a letter to the respondent asking for an extension of time of one week to reply to the enquiry. Since, the Enquiry Officer Mr. Muniyandi had retired from service on 31-1-2009, Mr. G. Krishnan was appointed as Enquiry Officer. But, appointing was informed to the petitioner through a letter, dated 25-7-2009. The petitioner letter was received by the petitioner that there was no reply from him. The Enquiry Officer issued an enquiry notice to the petitioner fixing the enquiry on 12-8-2009. The letter was received by the petitioner. He did not appear before the Enquiry Officer on 12-8-2009. On 18-8-2009 another notice was sent fixing the enquiry on 26-8-2009. On 26-8-2009, if he had issued to the Enquiry Officer asking for an adjournment. The enquiry was posted to 12-9-2009 and the matter was adjourned to 23-10-2009. Then the petitioner had issued several letters to the respondent asking for employment. The Enquiry Officer was again on 22-2-2010 issued an enquiry notice to the petitioner fixing an enquiry on 3-3-2010. The letter was issued by the petitioner, but did not appear. So, on 23-4-2010, the Enquiry Officer Mr. Krishnan had submitted his enquiry report, that the findings as per show cause notice, dated 4-3-2008 has been proved. On 28-4-2010, in order to give the petitioner another final opportunity to render his explanation to the earlier show cause notice, dated 4-3-2008, the respondent had issued a second show cause notice and had granted 48 hours to give an explanation. For that the petitioner had given a vague reply, dated 5-5-2010. The respondent had issued a detailed reply, dated 6-5-2010 to the petitioner's reply and the same was served on the petitioner. So, on 2-8-2010 the respondent had issued an order discharging the petitioner from service. The respondent had refused to receive the order and the same was returned with endorsement "unclaimed". So, publication was issued on 2-9-2010. The petitioner had issued letter, dated 2-9-2010 asking the respondent to submit all the papers. The respondent had issued detailed reply dated 15-9-2010. In this reply, the respondent clearly stated has already been handed over to the petitioner. The respondent had given all the papers to the trade union leader Mr. Kuppasamy and had acknowledged the same *vide* his letter, dated 11-2-2011. The enquiry conducted by the Enquiry Officer is valid as per law and it is followed the principles of natural justice. So, the claim petition is to be rejected.

4. On the side of the petitioner, PW.1 was examined, and the side of the respondent RW.1 was examined, on the petitioner's side Ex.P1 to Ex.P20 were marked. On the side of the respondent, Ex.R1 to Ex.R52 were marked.

#### 5. The point for consideration is:

Whether the industrial dispute can be allowed?

#### 6. On this point:

The dispute is with the reference to the non-employment of one Ezhumalai. The prayer is to set aside the order of discharge, dated 2-8-2010 passed by the respondent against the petitioner and direct the respondent to reinstate the petitioner with continuity of service, back wages and other benefits.

PW1 in his cross-examination stated as follows:

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In order to prove that he was not allowed to work on 29-9-2004 the petitioner has not examined any witness. Further, according to him in the year 2004 he was absent for ten days and the reason given for him is that he is affected by chicken pox. No medical records was filed to prove his sickness.

3-7-2004 Ó¼ø 16-7-2004 Å· Å ¿ìý Å½Å½ø §Å· Å |°òÅìÅø þòò§¼ý. ¿ò¼ÅÈì ¿ì· Å Ñ· ½òÅÈ 8 ¿ì¿ò Ìì §Åø Óý « ÈÅòÅýÈ Å½ò Ì ÅÅìÅø þòò¼ìø ¿¼ÅÈì · ±ì Ì òÅì õ ±ý Èìø °ì¼¿ý. 11 ¿ì¿ò Ì Óý « ÈÅòÅýÈ ÅÅì¼¼ìø Åò¼Å· ½ ¿¼ò¼ Åò¼Å· ½ « ¼¿ì Ì ¼ò. ÓÈÅìñ È ¿ÅÅì òÅò¼ì÷. Å½Å½ø §°òò§Åìð þòò¼ address-ø þòòð §ÅÚ address ÅìÈÅ¼ì. ¿Èò ðòò ¼ÅÅø· Å.

According to the petitioner he has joined duty. He has again joined duty in the respondent/management on 6-5-2010 and he continued the work of 'Badli' for the period of six months. He has not produced any documents or any oral evidence to prove it. According to the respondent sufficient opportunity was given to the petitioner to join duty. From the evidence of RW1 it is clear that the petitioner was in the habit of absconding from duty often. The petitioner was unauthorisedly absent from duty for the period of ten days in the first week of July 2004. Again the petitioner was unauthorisedly absent from duty from 3-7-2004 to 14-7-2004. Clause No. 15(a) of the Standing Orders of the respondent mills, clearly states that any worker who is unauthorisedly absent from duty for more than 8 days is construed to

have voluntarily left service and the respondent is empowered to remove such worker's name from his muster rolls. It is stated on the side of the petitioner that principles of natural justice was not followed by the respondent. But, each and every time show cause notice was issued to the petitioner and he refused to receive the notice and they were returned as unclaimed. The returned postal covers containing the show cause notice were marked in this case. Since, the petitioner has not co-operated with the Enquiry Officer, after following the procedures only the Enquiry Officer has submitted his final report. It is further stated on the side of the respondent that the petitioner was again unauthorisedly absent from duty from 6-9-2004 till 14-9-2004. Then, he came to work on 15-9-2004 and he was not permitted to work. Since, he has shouted at the Time Keeper, the Time Keeper Nagarajan had given a complaint and is marked as Ex.R22. So, as per the rules and regulations of the respondent mills, the petitioner was placed under suspension as per the order, dated 15-9-2004. So, from the available records, it is clear that the petitioner was in the habit of absconding from duty and his conduct was also not good. After placing him under suspension, the show cause notice-cum-suspension order Ex.R23 was sent to the petitioner. It is received by the petitioner and the acknowledgment card is marked as Ex.R1. The findings of the Enquiry Officer Mr. Muniyandi is marked as Ex.R24.

7. The petitioner was again unauthorisedly absent from duty from 17-10-2004 to 12-11-2004. For that also the show cause notice was sent and was returned with endorsement "unclaimed". Since, the petitioner was unauthorisedly avoiding the service of notice of letter, publication was made in the local daily. So, the argument that the principles of natural justice was not followed is not a correct statement. From the available records, it is clear that sufficient opportunity was given to the petitioner to render his explanation and he has not submitted any explanation. After following all the procedures only the respondent had issued order of discharge, dated 2-8-2010 and this discharge order is marked as Ex.R47. That the order was sent to the petitioner through registered post. He has refused to receive the order, dated 2-8-2010 and the same was returned with an endorsement "unclaimed". The postal cover is marked as Ex.R48. So, the publication was made on 2-9-2010, the copy of the publication is marked as Ex.R49. So, the proper enquiry report was sent to the petitioner and the orders were also sent to the petitioner but, he had unauthorisedly refused to receive them. So, there is no possibility to set aside the order of the discharge dated 2-8-2010 passed by the respondent

against the petitioner. The petitioner was in the habit of absconding from duty is clearly proved in this case and so, there is no possibility to give a direction to the respondent to reinstate the petitioner with continuity of service and back wages and other benefits. The non-employment of Ezhumalai is justified through oral and documentary evidence. Taking into consideration of all the above said aspects, the claim petition filed by the petitioner is dismissed.

8. In the result, the claim petition is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 27th day of June 2014.

**S. MARY ANSELAM,**  
Presiding Officer,  
Labour Court (FAC), Pondicherry.

*List of petitioner's witness:*

PW.1 — 29-5-2013 — Ezhumalai

*List of respondent's witness:*

RW.1 — 21-8-2013 — Sugumaran

*List of petitioner's exhibits:*

Ex.P1 — Copy of order passed by the respondent against the petitioner, dated 6-12-2004.

Ex.P2 — Copy of representation given by the petitioner to the respondent to provide employment, dated 26-3-2005.

Ex.P3 — Copy of representation given by the petitioner to the respondent to provide employment, dated 4-8-2005.

Ex.P4 — Copy of representation given by the petitioner's brother-in-law viz. A. Balachandran to the respondent, dated 29-11-2005.

Ex.P5 — Copy of letter given by the petitioner to the Personal Officer, respondent mill, dated 30-9-2006.

Ex.P6 — Copy of publication in Daily Thanthi newspaper, dated 8-1-2009.

Ex.P7 — Copy of notice issued by the respondent through registered post, dated 4-3-2008.

Ex.P8 — Copy of letter sent by the respondent to the petitioner stating that they were ready to give employment to the petitioner, dated 6-5-2010.

Ex.P9 — Form No. 25-B-Time Card, dated August 2010.

Ex.P10 — Copy of proceedings of the Enquiry Officer, dated 23-1-2009 to 3-3-2010.

- Ex.P11— Copy of enquiry report of the Enquiry Officer, dated 23-4-2010.
- Ex.P12— Copy of second show cause notice issued by the respondent, dated 28-4-2010.
- Ex.P13— Copy of reply given by the petitioner to second show cause notice, dated 5-5-2009.
- Ex.P14— Copy of publication in Daily Thanthi Tamil daily, dated 2-8-2010.
- Ex.P15— Copy of discharge order, dated 2-8-2010.
- Ex.P16— Copy of letter sent by the petitioner to the respondent mill, dated 2-9-2010.
- Ex.P17— Copy of letter sent by the petitioner's union to Conciliation Officer, Labour Department, Puducherry, dated 30-8-2011.
- Ex.P18— Copy of reply/counter to the representation, dated 30-8-2011 by Panjalai Thozhirsangam Congress in respect of the petitioner, dated 9-12-2011.
- Ex.P19— Copy of re-joinder given by the petitioner's union to Conciliation Officer, Labour Department, Puducherry, dated 20-4-2012.
- Ex.P20— Copy of failure report given by the Conciliation Officer, dated 24-5-2012.

*List of respondent's exhibits:*

- Ex.R1 — Postal acknowledgment card.
- Ex.R2 — Copy of the letter issued by the petitioner to the respondent, dated 27-9-2004.
- Ex.R3 — Copy of the order issued by the respondent to the petitioner, dated 28-9-2004.
- Ex.R4 — Copy of the letter issued by the petitioner to the respondent, dated 26-3-2005.
- Ex.R5 — Copy of the letter issued by the petitioner to the respondent, dated 23-1-2009.
- Ex.R6 — Postal acknowledgment card.
- Ex.R7 — Copy of the letter issued by the petitioner to the respondent, dated 26-8-2009.
- Ex.R8 — Copy of the letter issued by the respondent to the petitioner, dated 23-10-2009.
- Ex.R9 — Copy of the letter issued by the petitioner to the respondent, dated 9-1-2010.
- Ex.R10— Postal acknowledgment card.
- Ex.R11— Postal acknowledgment card.
- Ex.R12— Copy of the letter issued by the petitioner to the respondent, dated 5-5-2009.
- Ex.R13— Copy of the letter issued by the petitioner to the respondent, dated 2-9-2010.
- Ex.R14— Copy of show cause notice, dated 15-7-2004.
- Ex.R15— Returned postal cover containing the show cause notice.
- Ex.R16— Copy of enquiry notice, dated 22-7-2004.

- Ex.R17— Returned postal cover containing the enquiry notice.
- Ex.R18— Copy of 2nd enquiry notice, dated 2-8-2004.
- Ex.R19— Copy of 3rd enquiry notice, dated 14-8-2004.
- Ex.R20— Returned postal cover containing the 3rd enquiry notice.
- Ex.R21— Copy of proceedings of the Enquiry Officer, dated 21-8-2004.
- Ex.R22— Copy of complainant given by the said Nagarajan, dated 15-9-2004.
- Ex.R23— Copy of show cause notice-*cum*- suspension order, dated 15-9-2004.
- Ex.R24— Copy of findings of the Enquiry Officer.
- Ex.R25— Copy of the notice, dated 12-11-2004.
- Ex.R26— 2nd show cause notice, dated 15-11-2004.
- Ex.R27— Returned postal cover containing the 2nd show cause notice, dated 15-11-2004.
- Ex.R28— Order dated 6-12-2004.
- Ex.R29— Returned postal cover containing the order, dated 6-12-2004.
- Ex.R30— Copy of show cause notice, dated 4-3-2008.
- Ex.R31— Copy of show cause notice, dated 4-3-2008.
- Ex.R32— Copy of paper publication, dated 8-1-2009.
- Ex.R33— Copy of letter, dated 25-7-2009.
- Ex.R34— Copy of the enquiry notice, dated 4-8-2009.
- Ex.R35— Copy of the post acknowledgment card.
- Ex.R36— Copy of the enquiry notice, dated 18-8-2009.
- Ex.R37— Copy of the reply issued by the postal department, dated 4-9-2009.
- Ex.R38— Copy of the enquiry notice, dated 3-9-2009.
- Ex.R39— Copy of the post acknowledgment card.
- Ex.R40— Copy of the letter, dated 28-11-2009.
- Ex.R41— Copy of the letter, dated 31-12-2009.
- Ex.R42— Copy of the letter, dated 22-2-2010.
- Ex.R43— Copy of the enquiry report, dated 23-4-2010.
- Ex.R44— Copy of the notice, dated 28-4-2010.
- Ex.R45— Copy of the letter, dated 6-5-2010.
- Ex.R46— Postal acknowledgment card.
- Ex.R47— Copy of the discharge order, dated 2-8-2010.
- Ex.R48— Returned postal cover.
- Ex.R49— Copy of the publication, dated 2-8-2010.
- Ex.R50— Copy of the letter, dated 15-9-2010.
- Ex.R51— Postal acknowledgment card.
- Ex.R52— Copy of letter, dated 11-2-2011.

S. MARY ANSELAM,  
Presiding Officer,  
Labour Court (FAC), Pondicherry.